Harvis & Fett

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September 1, 2015

BY ECF
Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Holmes v. City of New York, et al.*, 14 CV 10232 (KBF)

Your Honor:

I represent plaintiff in the above-referenced civil rights action. I write pursuant to Fed. R. Civ. P. 37(a)(3)(B)(iii)-(iv) and § 2(F)(ii) of the Court's Individual Practices to respectfully request **an order compelling defendants to respond to plaintiff's discovery demands by a date certain and waiving defendants' objections.**

Pursuant to § 2(F)(i) of the Court's Individual Practices, plaintiff hereby certifies that, following an exchange of related e-mails beginning on August 24, 2015 as described below, the undersigned counsel met and conferred in good faith with the opposing party's counsel by telephone yesterday in an effort to resolve the dispute without Court intervention. The parties were unable to resolve the dispute.

Plaintiff served his first set of interrogatories and document requests by hand on July 13, 2015, the date of the initial conference, and defendants' responses were thus due thirty days later, i.e. by August 12, 2015. *See* Fed. R. Civ. P. 33(b)(2) and 34(b)(2)(A). No response (or request for consent to an extension) was received by that date. By e-mail dated August 24th, the undersigned informed defense counsel that the responses were overdue and requested that they be served no later than August 26, 2015. When no response to that e-mail was received, the undersigned again e-mailed defense counsel on August 27, 2015, indicating plaintiff's intention to file the instant motion.

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By e-mail dated August 28, 2015, defense counsel responded that he was working on a motion in an unrelated matter and the responses would be served "next week." As a courtesy, plaintiff agreed to wait until this morning to submit the instant application and the parties met and conferred by telephone yesterday. During the call yesterday, defense counsel indicated an intention to serve the responses tomorrow, but also stated that they had not yet been prepared.

With a fact discovery deadline of November 13, 2015 in this case, plaintiff has only ten weeks remaining within which to identify and depose relevant witnesses and pursue all outstanding documents and information. Plaintiff respectfully submits that the three-week delay in defendants' service of responses has already prejudiced plaintiff in his efforts to comply with this Court's Scheduling Order dated July 13, 2015. *See Cohalan v. Genie Indus., Inc.*, 276 F.R.D. 161, 163 (S.D.N.Y. 2011) ("A failure to respond or object to a discovery request in a timely manner waives any objection which may have been available.... Any other result would...completely frustrate the time limits contained in the Federal Rules and give a license to litigants to ignore the time limits for discovery without any adverse consequences.") (internal quotation marks and citations omitted) (collecting cases).

Accordingly, plaintiff respectfully requests **that defendants be compelled to provide their overdue responses to plaintiff's discovery demands by a date certain and that their objections be waived.**

Thank you for your consideration of this request.

Respectfully submitted,

Gabriel P. Harvis

cc: ACC Pernell M. Telfort, Esq.